

which facts and circumstances were discovered or information was received that caused the Customs Service to believe that a possibility of a violation existed. In the event that a party affirmatively asserts a prior disclosure (i.e., identified or labeled as a prior disclosure) and is denied prior disclosure treatment on the basis that Customs had commenced a formal investigation of the disclosed violation, and Customs initiates a penalty action against the disclosing party involving the disclosed violation, a copy of a "writing" evidencing the commencement of a formal investigation of the disclosed violation shall be attached to any required prepenalty notice issued to the disclosing party pursuant to 19 U.S.C. 1592 or 19 U.S.C. 1593a.

(h) *Scope of the disclosure and expansion of a formal investigation.* A formal investigation is deemed to have commenced as to additional violations not included or specified by the disclosing party in the party's original prior disclosure on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received that caused the Customs Service to believe that a possibility of such additional violations existed. Additional violations not disclosed or covered within the scope of the party's prior disclosure that are discovered by Customs as a result of an investigation and/or verification of the prior disclosure shall not be entitled to treatment under the prior disclosure provisions.

(i) *Knowledge of the commencement of a formal investigation*—(1) A disclosing party who claims lack of knowledge of the commencement of a formal investigation has the burden to prove that lack of knowledge. A person shall be presumed to have had knowledge of the commencement of a formal investigation of a violation if before the claimed prior disclosure of the violation a formal investigation has been commenced and:

(i) Customs, having reasonable cause to believe that there has been a violation of 19 U.S.C. 1592 or 19 U.S.C. 1593a, so informed the person of the type of or circumstances of the disclosed violation; or

(ii) A Customs Special Agent, having properly identified himself or herself and the nature of his or her inquiry, had, either orally or in writing, made an inquiry of the person concerning the type of or circumstances of the disclosed violation; or

(iii) A Customs Special Agent, having properly identified himself or herself and the nature of his or her inquiry, requested specific books and/or records of the person relating to the disclosed violation; or

(iv) Customs issues a prepenalty or penalty notice to the disclosing party pursuant to 19 U.S.C. 1592 or 19 U.S.C. 1593a relating to the type of or circumstances of the disclosed violation; or

(v) The merchandise that is the subject of the disclosure was seized; or

(vi) In the case of violations involving merchandise accompanying persons entering the United States or commercial merchandise inspected in connection with entry, the person has received oral or written notification of Customs finding of a violation.

(2) The presumption of knowledge may be rebutted by evidence that, notwithstanding the foregoing notice, inquiry or request, the person did not have knowledge that an investigation had commenced with respect to the disclosed information.

[T.D. 98-49, 63 FR 29131, May 28, 1998; 63 FR 35798, July 1, 1998; T.D. 99-27, 64 FR 13676, Mar. 22, 1999; T.D. 99-64, 64 FR 43267, Aug. 10, 1999; T.D. 00-5, 65 FR 3809, Jan. 25, 2000; T.D. 00-57, 65 FR 53575, Sept. 5, 2000]

#### **§ 162.75 Seizures limited under section 592, Tariff Act of 1930, as amended.**

(a) *When authorized.* Merchandise may be seized for violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592) *only* if the port director has reasonable cause to believe that a person has violated the statute and that

(1) The person is insolvent,

(2) The person is beyond the jurisdiction of the United States,

(3) Seizure otherwise is essential to protect the revenue, or

(4) Seizure is essential to prevent the introduction of prohibited or restricted merchandise into the Customs territory of the United States.

(b) *No seizure if prior disclosure.* Under no circumstances shall merchandise be seized under the authority of 19 U.S.C. 1592 if there has been a prior disclosure of the violation. This paragraph does not limit seizures under the authority of any other applicable law or regulation.

(c) *Seizure notice.* If merchandise is seized, the Fines, Penalties, and Forfeitures Officer shall promptly issue a written notice of seizure to the person concerned and to any other person the facts of record indicate has an interest in the merchandise. The seizure notice shall contain the information required by § 162.31 and shall state why the seizure was necessary.

(d) *Release of seized merchandise—(1) To person from whom seized.* The Fines, Penalties, and Forfeitures Officer shall return seized merchandise to the person from whom seized upon the deposit of security, in a form acceptable to the Fines, Penalties, and Forfeitures Officer, equal to the maximum penalty which may be assessed, if the entry of the merchandise into the commerce of the United States is not prohibited or restricted.

(2) *To others.* The Fines, Penalties, and Forfeitures Officer may release seized merchandise to any other person upon the deposit of adequate security, in a form acceptable to the Fines, Penalties, and Forfeitures Officer, if the entry of the merchandise into the commerce of the United States is not prohibited or restricted, and if:

(i) The Fines, Penalties, and Forfeitures Officer is satisfied that the person has a substantial interest in the merchandise, and

(ii) The person submits either an agreement to hold the United States and its officers and employees harmless, or a release from the owner and/or the person from whom the merchandise was seized.

(3) *Forfeiture.* If neither a petition for relief is filed in accordance with part 171 of this chapter, nor compliance made with the decision within the time provided by law, the Fines, Penalties, and Forfeitures Officer immediately shall report the facts and refer the case

to the Department of Justice for the institution of court proceedings.

[T.D. 72-211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 84-18, 49 FR 1679, Jan. 13, 1984; T.D. 85-90, 50 FR 21431, May 24, 1985; T.D. 86-118, 51 FR 22516, June 20, 1986; T.D. 88-43, 53 FR 28195, July 27, 1988; T.D. 99-27, 64 FR 13676, Mar. 22, 1999]

**§ 162.76 Prepenalty notice for violations of sections 466 or 584(a)(1), Tariff Act of 1930, as amended.**

(a) *When required.* If the Fines, Penalties, and Forfeitures Officer has reasonable cause to believe that a violation of section 466 or 584(a)(1), Tariff Act of 1930, as amended (19 U.S.C. 1466, 1584(a)(1)), has occurred and determines that further proceedings are warranted, he shall issue to the person concerned a written notice of his intent to issue a penalty claim or a claim of forfeiture, as appropriate.

(b) *Contents—(1) Facts of violation.* The prepenalty notice shall:

(i) Describe the merchandise, if applicable,

(ii) Set forth the details of the error in the manifest, if applicable,

(iii) Specify all laws and regulations allegedly violated,

(iv) Describe all material facts and circumstances which establish the alleged violation, and

(v) State the estimated loss of duties, if any, and, taking into account all circumstances, the amount of the proposed penalty claim or claim of forfeiture, as appropriate.

(2) *Right to make presentation.* The prepenalty notice also shall inform the person of his right to make a written and an oral presentation within 30 days of the mailing of the notice (or such shorter period as may be prescribed under § 162.78) as to why a penalty claim or claim of forfeiture should not be issued or, if issued and it involves a monetary amount, why it should be in a lesser amount than proposed.

(c) *Exception.* No prepenalty notice shall be issued if the proposed penalty for an alleged violation of 19 U.S.C. 1584(a)(1) is \$500 or less.

[T.D. 79-160, 44 FR 31958, June 4, 1979, as amended by T.D. 99-27, 64 FR 13676, Mar. 22, 1999]